

DEPT. OF TRANSPORTATION
DOCKETS
JAN 23 2007

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

IN THE MATTER OF:

**Specialized Distribution
(Respondent)**

PHMSA CASE Number:

07-0121-SC-HQ

COMPROMISE ORDER

By this Order I find that Specialized Distribution (Respondent) committed three (3) violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$2,500 civil penalty for these violations.

I. Summary

Respondent:

Specialized Distribution
901 S. Fremont Avenue, Unit 218
Alhambra, CA 91803-4739

ATTN: Mr. Yeh Bing, President

No. of Violations:

3

Maximum Possible Civil Penalty: \$150,000

Total Payment Due: \$2,500

II. Finding

This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this case. I find Respondent committed the violations described in the Compromise Agreement (Agreement),

which I have attached hereto. I have reviewed the Agreement and I find that the terms as outlined therein are in the best interest of justice. The Agreement, in its entirety, is incorporated in and attached to this Order. All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

So Ordered,

A handwritten signature in black ink, appearing to read "Sherri Pappas", written over a horizontal line.

Sherri Pappas
Acting Chief Counsel
Pipeline and Hazardous
Materials Safety Administration

for

Dated: 01/23/09

Attachments

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of JAN 23 2009, 2009, the undersigned served in the following manner the designated copies of this Order with attached Addendums to each party listed below:

Yeh Bing, President
Specialized Distribution
901 S. Fremont Avenue, Unit 218
Alhambra, CA 91803-4739

Original Order with
Copy of Agreement
Certified Mail
Return Receipt Requested

Ryan Posten, Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 02590

One Copy (without
enclosures)
Via Electronic Mail

Douglas Smith, Enforcement Officer
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue , S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

Christina Tackett, Attorney
Pipeline and Hazardous Materials Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E., E26-202
Washington, D.C. 20590

One Copy
Personal Delivery

U.S. DOT Dockets
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Room W12-140
Washington, D.C. 20590

One Copy
Personal Delivery

Ted Willke, Associate Administrator
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

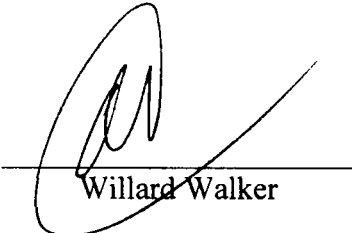
Bob Richard, Deputy Associate Administrator
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

Tonya Schreiber, Executive Director
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

One Copy (without
enclosures)
Via Electronic Mail

JAN 23 2009



Willard Walker

ADDENDUM A

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**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

IN THE MATTER OF:

**Specialized Distribution
(Respondent)**

PHMSA CASE Number:

07-0121-SC-HQ

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

Specialized Distribution (“Respondent”), a shipper of green gas, located in Alhambra, CA.

and

The Pipeline and Hazardous Materials Safety Administration (“PHMSA”), a modal Administration of the United States Department of Transportation.

II. Authority/Jurisdiction

A. The Parties enter into this Agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. For the Purposes of this Agreement, Respondent acknowledges:

(1) As a shipper of green gas, which is used to power Airsoft replica firearms, it is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of Transportation, (b) the PHMSA’s Associate Administrator for Hazardous Materials Safety, and (c) PHMSA’s Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301);

(2) PHMSA has sufficient proof to show by a preponderance of the evidence that Respondent violated the Federal regulations listed in Section V below; and

(3) That it received proper notice of PHMSA's action in this proceeding.

III. Background

A. On April 9 and 10, 2007, an Inspector from PHMSA's Office of Hazardous Materials Enforcement (OHME) conducted routine compliance inspections at the place of business of two of Respondent's customers. Based on the evidence and information gathered during the inspections, the Inspector reported three (3) violations of the HMR. On April 11, 2007, the Inspector conducted an "exit briefing" at Respondent's facility during which the Inspector discussed the alleged violations and the required corrective actions with Respondent's representative.

B. Upon completion of the compliance inspection, the Inspector submitted a report to OHME's Headquarters Office, where the report was reviewed for accuracy and sufficiency of evidence. Based on that review, the OHME's Headquarters Office referred the matter to PHMSA's Office of Chief Counsel thereby recommending the initiation of a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

C. Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violations, as set forth in the Inspector's report, on June 12, 2008, an attorney from PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging three (3) violations of the HMR and proposing a \$19,040 civil penalty.

IV. Basis of Agreement

A. Reply to Notice. On June 26, 2008, Respondent submitted a timely reply to the Notice, but did not request an informal conference.

B. Corrective Action. In a correspondence dated May 21, 2007, Respondent submitted evidence of corrective actions it had taken in response to the exit briefing. The following is a summary of all of Respondent's corrective actions.

Violation Number	Respondent's Corrective Action
1	Respondent indicated that it understands that green gas must be declared as hazardous material.
2	Respondent ceased shipping green gas until it confirms an approved method of shipping.
3	Respondent submitted a certification of training for Dave Truong, Assistant Manager.

C. Small Business Size. Evidence in the record also substantiates that Respondent is a small business.

D. Additional Factors. Following the issuance of the Notice in this case, Respondent provided PHMSA with a current balance sheet, which indicates that Respondent would have difficulty paying the \$19,040 penalty amount proposed in the Notice. In consideration of Respondent's financial status, PHMSA determined that a reduction in the penalty amount was warranted.

V. Violations and Civil Penalty

In a subsequent Order, the Chief Counsel will find that Respondent committed the following violations and will assess the following civil penalty:

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation in commerce, an undeclared hazardous material, when the materials were not described, marked and labeled, in violation of 49 C.F.R §§ 171.2(b), 172.200(a), 172.300(a), 172.400(a), 172.602, 172.604 and 173.22(a)(1).	\$12,000	\$1,500
2	Offering for transportation in commerce, a hazardous material, in unauthorized packagings, in violation of 49 C.F.R §§171.2(b), 173.22(a)(2), 173.302(a), and 173.304(a).	\$5,600	\$750
3	Offering for transportation in commerce, a hazardous material, while failing to provide hazardous materials training to hazardous materials employees, in violation of 49 C.F.R. §§ 172.701.2(b) and (c) and 172.702(a).	\$1,440	\$250
TOTAL	-----	\$19,040	\$2,500

VI. Factors Considered in Determining the Civil Penalty

In determining the amount of a civil penalty, PHMSA considered the following statutory criteria (49 U.S.C. § 5123(c)):

- (1) The nature, circumstances, extent, and gravity of the violations;
- (2) The degree of culpability and history of prior violations;
- (3) Respondent's size;
- (4) Respondent's ability to pay the penalty and its ability to continue to do business; and
- (5) Other matters as justice may require.

Documentation of Respondent's corrective actions for these violations and the fact that Respondent is a small business, justify assessing a civil penalty of \$2,500.

VII. Terms and Conditions

A. Respondent agrees to pay the sum of \$2,500 as full satisfaction of the civil penalty proposed in the Notice in six (6) monthly payments of \$417 for four (4) months and \$416 for two (2) months.

(1) Respondent must pay the first \$417 of the payment plan within thirty days of the date of the Compromise Order.

(2) Respondent must pay an additional installment each thirty days after that until the entire amount is paid.

B. By entering into this Agreement, Respondent waives:

(1) Any right to present further written or oral explanations, information, and arguments in this matter;

(2) Any right to Administrative appeal; and

(3) Any right to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this case.

C. This Agreement resolves only the violations noted in PHMSA Ref. No. 07-0121-SC-HQ as referenced in Section V of this Agreement. In the event Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any exemption, or order issued thereunder these violations shall constitute a prior violation under 49 U.S.C. § 5123.

D. After Respondent returns this signed Agreement, PHMSA's representative will present the Agreement to the Chief Counsel requesting that the Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

E. After issuance of the Compromise Order, Respondent must pay the civil penalty in accordance with the terms of this Agreement. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

VIII. Miscellaneous Provisions

A. By signing this Agreement, Respondent or its representative warrants to have read the Agreement and understood its terms and conditions.

B. The individuals signing on behalf of the Respondent and PHMSA represent that they are authorized to sign and have authority to enter into this Agreement.

C. Respondent's failure to sign and return this Agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

Christina Tackett
United States Department of Transportation
Pipeline and Hazardous
Materials Safety Administration
1200 New Jersey Avenue, S.E.
PHC-10, Room E26-202
Washington, D.C. 20590-0001

Respondent

Federal Tax ID #: 91-2044710¹

By: DAVE TRUONG, ASST. GEN. MGR Date: 01/12/09
Name, Capacity or position



**Pipeline and Hazardous
Materials Safety Administration**

By: Christina Tackett Date: 01/22/09
Christina L. Tackett, Attorney-Advisor

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). PHMSA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

ADDENDUM B

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Payment Information

Respondent must pay a total civil penalty of \$2,500 in six (6) monthly payments of \$417 for four (4) months and \$416 for two (2) months in accordance with the following:

Due date

Respondent must pay the first payment of the civil penalty (\$417) within 30 days of the date of this Order. Respondent must pay an additional installment each thirty days after that until the entire amount is paid.

Payment Method

Respondent must pay the civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) **Wire Transfer.**

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

Financial Operations Division
Attn: Linda Lavalle
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 269039
Oklahoma City, OK 73125
Telephone (405) 954-8893.

(2) **Check or Money Order.**

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

Financial Operations Division
Attn: Linda Lavalle
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 269039
Oklahoma City, OK 73125.

(3) **Credit Card.**

To pay electronically using a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov>

Interest and Administrative Charges

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent (31 C.F.R. § 901.3).

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
RESEARCH AND SPECIAL PROGRAMS,
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69140001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE:**
\$10,000.00

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001" Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT – "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-8893.